

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

In the Matter of

Civil Citation No. 71347

Sandra Fisher

18 Rain Flower Path, Unit 204

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on March 23, 2010, for a Hearing on a citation for violations of the Baltimore County Code (BCC) section 35-6-105, 35-6-112: Respondent has not obtained a rental housing license for rental property known as 18 Rain Flower Path, Unit 204, 21152

On February 24, 2010, pursuant to § 3-6-205, Baltimore County Code, Inspector Kathleen O'Donnell issued a Code Enforcement citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$1,000.00 (one thousand dollars).

The following persons appeared for the Hearing and testified: Sandra Fisher, Respondent represented by John M. Seeberger, Esquire and, Kathleen O'Donnell, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence presented, the Hearing Officer finds:

A. A Correction Notice was issued on November 19, 2009 requiring application by December 10, 2009. This Citation was issued on February 24, 2010. Baltimore County law requires landlords to obtain a valid Rental Housing License before a residential property may be rented. BCC 35-6-105. The purpose of the licensing program is to create an additional procedure for the enforcement of county codes and regulations, and to reverse the physical decline of areas of the county that have a high number of rental properties, older rental properties, high crime rates, or have experienced a significant shift from single family owner-occupied homes to multiple family rental properties. BCC 35-6-102.

B. Inspector Kathy O'Donnell testified that the County's notices were issued following receipt of a complaint from the condominium association that this unit was an unlicensed rental property. Respondent sent in an affidavit claiming exemption, but used a different mailing address. Respondent said that she couldn't live in the unit full time and asked a friend to move in and share expenses. The Baltimore County Office of Law advised that the property needs to be registered as a rental property if the owner is not living there and has a separate address.

C. Attorney John Seeberger argued that the County's rental registration program does not apply here because Respondent has a roommate, not a tenant, and therefore the dwelling is "owner-occupied" and exempted under BCC 35-6-103. He further argued that Respondent is not limited to having one residence, and cited Maryland court cases supporting his arguments.

D. Respondent Fisher testified that she bought the condominium unit in 2003 so she could stay there during periods of inclement weather, close to her workplace. She asked a close friend to move in with her and share some expenses. Her own furniture, toiletries, clothing, and belongings are there, in her own fully established bedroom and bathroom, and she stays there occasionally. The utilities are in Respondent's name only, and she has homeowners insurance. She further testified that she has been the sole caretaker of her aunt and parents and frequently had to stay with them to provide care. She testified that she has been having a dispute with her condominium association about whether she has a roommate or a tenant. She further testified that she owns an additional property in

Baltimore City that is a rental property, with the tenant having exclusive use, and that she uses a property management company to manage and rent that property; she testified that if this condominium unit was a rental property, she would also use the company to manage it. She has never advertised the unit for rent and does not have a leasehold arrangement with her roommate.

E. Based on the evidence presented, Respondent occupies this property part time, along with a roommate who shares expenses. While this is not her primary residence, the evidence does not indicate that she is claiming residence as a pretext or for purposes of evading responsibility. Under the County's code provisions, a dwelling that is owner-occupied including one additional individual is exempt from the Rental Housing License requirement. BCC 35-6-103(b). On balance, the evidence shows that Respondent occupies the unit that she owns, and this Citation will therefore be dismissed.

IT IS ORDERED by the Code Enforcement Hearing Officer that the Citation is DISMISSED.

ORDERED this 25th day of May 2010

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.

